

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHACHALOUNGE LLC D/B/A CHA  
CHA LOUNGE & BIMBO'S  
CANTINA, and JOWW LLC D/B/A/  
PERCY'S & CO., individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

CERTAIN UNDERWRITERS AT  
LLOYD'S LONDON SUBSCRIBING  
TO POLICY NO. RTB-000493-01,  
CERTAIN UNDERWRITERS AT  
LLOYD'S, LONDON SUBSCRIBING  
TO POLICY NO. RTB-000494-01, and  
CERTAIN UNDERWRITERS  
AT LLOYD'S, LONDON,

Defendants.

No.

**NOTICE OF REMOVAL BY  
DEFENDANTS CERTAIN  
UNDERWRITERS AT LLOYD'S,  
LONDON SEVERALLY  
SUBSCRIBING TO POLICY NO.  
RTB-0000493-01 AND CERTAIN  
UNDERWRITERS AT LLOYD'S,  
LONDON SEVERALLY  
SUBSCRIBING TO POLICY NO.  
RTB-0000494-01**

[Removal from King County Superior  
Court Case No. 21-2-03805-7]

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF WASHINGTON:

PLEASE TAKE NOTICE that Defendants identified as “Certain Underwriters at Lloyd’s, London Subscribing to Policy No. RTB-0000493-01” and “Certain Underwriters at Lloyd’s, London Subscribing to Policy No. RTB-0000494-01” (collectively “Defendants” and/or “Underwriters”), while not being properly served and reserving of all defenses and rights, hereby remove this action, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, from the Superior Court of the State of Washington for King County to the United States District Court for the Western District of Washington. In support of this Notice, Defendants respectfully state as follows that removal is proper on the following grounds:

### **I. BACKGROUND AND PROCEDURAL HISTORY**

1. Plaintiff Chachalounge LLC d/b/a Cha Cha Lounge & Bimbo’s Cantina (“Cha Cha Lounge”) and Plaintiff JOWW LLC d/b/a Percy’s & Co. (“Percy’s”), which on information and belief as represented by their counsel have a common ownership interest (sometimes referred herein collectively as “Plaintiffs”), filed a class action complaint against Certain Underwriters at Lloyd’s, London in King County Superior Court, Case No. 21-2-03850-7 (“State Court Action”), seeking relief on behalf of Plaintiffs and hundreds of purported class members for damages based on breach of contract, costs and attorney fees, along with declaratory relief as to insurance coverage arising from loss of business related to closure due to COVID-19. A true and correct copy of Plaintiffs’ Complaint in the State Court Action is attached hereto as Exhibit 1.

2. Counsel for Plaintiffs in this action also represents Plaintiff Jennifer B. Nguyen in a competing class action in the above-entitled Court, *Nguyen v.*

1 *Travelers Casualty Insur. Co. of Am.*, W.D. Wash. Case No. 2:20-cv-00597,  
 2 asserting jurisdiction is proper based on the Class Action Fairness Act of 2005  
 3 (“CAFA”), 28 U.S.C. §§ 1332(d)(2) in that at least one class member is of diverse  
 4 citizenship from the insuring defendant in that case, there are 100 or more class  
 5 members, and the aggregate amount in controversy exceeds \$5,000,000 (See  
 6 Nguyen Complaint, W.D. Wash. Case No. 2:20-cv-00597, [ECF No. 1](#), at ¶ 1;  
 7 Amended Nguyen Complaint, [ECF No. 15](#) at ¶ 1). As Plaintiffs are aware, this  
 8 Court has joined the majority of courts around the country who have addressed  
 9 similar claims as presented here and in *Nguyen* in finding that such businesses are  
 10 not entitled to coverage under their insurance policies for lost income stemming  
 11 from the COVID-19 pandemic. See *Nguyen v. Travelers Cas. Ins. Co. of Am.*,  
 12 No. 2:20-cv-00597-BJR, \_\_ F.Supp.3d \_\_, 2021 WL 2184878, 2021 U.S. Dist.  
 13 LEXIS 101772 (W.D. Wash. May 28, 2021), *reconsideration denied*, 2021 WL  
 14 3077922, 2021 U.S. Dist. LEXIS 136141 (W.D. Wash. July 21, 2021).

15 3. On June 18, 2021, without waiving the defects to sufficiency of  
 16 process and/or service of process in connection with the Complaint and via  
 17 special appearance, Defendant Underwriters that signed onto a certificate for  
 18 insurance issued to Plaintiff Cha Cha Lounge, i.e. Policy No. RTB-0000493-01,  
 19 filed an answer to the Complaint, asserting various defenses, including but not  
 20 limited to improper service. A true and correct copy of the Answer to the  
 21 Complaint is attached as Exhibit 2.

22 4. On August 10, 2021, Plaintiffs filed an “Amended Complaint-Class  
 23 Action” (against Defendants identified as “Certain Underwriters at Lloyd's,

1 London subscribing to Policy No. RTB-0000493-01,” “Certain Underwriters at  
 2 Lloyd's, London subscribing to Policy No. RTB-0000494-01”, and “Certain  
 3 Underwriters at Lloyd’s, London.” A true and correct copy of the Amended  
 4 Complaint-Class Action is attached as Exhibit 3.

5 5. On September 20, 2021, without waiving the defects to the service of  
 6 process in connection with the Amended Complaint and via special appearance,  
 7 Defendants filed an answer to the Amended Complaint-Class Action, a true and  
 8 correct copy of which is attached as Exhibit 4.

9 6. Plaintiffs’ purported class action is removable pursuant to 28 U.S.C.  
 10 §§ 1332, 1441 and 1446 in that the Court has diversity jurisdiction as Plaintiffs  
 11 and Defendants are not citizens of the same state and the amount in controversy  
 12 exceeds \$75,000. In addition, Plaintiffs’ purported class action is removable  
 13 pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§  
 14 1332(d)(2) and 1453(b), in that the number of class members alleged amounts to  
 15 be in the hundreds (Amended Compl. at ¶ 80), the amount in controversy exceeds  
 16 \$5,000,000, and both named Plaintiffs are diverse from the citizenship of  
 17 Defendants (28 U.S.C. §§ 1332(d)(2)(A)) and/or at least one Defendant is a  
 18 citizen or subject of a foreign state (28 U.S.C. §§ 1332(d)(2)(B). See also *Nguyen*,  
 19 2021 U.S. Dist. LEXIS 101772 \*23 (W.D. Wash. May 28, 2021). Pursuant to 28  
 20 U.S.C. § 1446, a copy of this Notice of Removal, together with copies of all  
 21 process, pleadings and orders being filed with the Superior Court of Washington,  
 22 County of King, and will be served on counsel for Plaintiffs and, upon their being  
 23 served or appearing, any other named defendants in this action.

## II. THE PARTIES

7. As alleged in the State Court Action, Plaintiff Cha Cha Lounge is a Washington limited liability company, with its principal place of business in Seattle, Washington. *See* Exhibit 3, Amended Compl. at ¶ 3.

8. As alleged in the State Court Action, Plaintiff Percy's is a Washington limited liability company, with its principal place of business in Seattle, Washington. *See* Exhibit 3, Amended Compl. at ¶ 4.

9. Defendants, who subscribe to Policy Nos. RTB-0000493-01 and RTB-0000494-01 (the "Policies"), are business entities domiciled in the United Kingdom. None are citizens of Washington.

## III. THE ACTION

10. The State Court Action arises from Plaintiffs' claim for breach of contract and declaratory relief causes of action against Defendants in connection with the Policies, sold and issued by Defendants. *See* Exhibit 3, Amended Compl. at ¶ 11. Like the Plaintiff in *Nguyen, supra*, and other cases, Plaintiffs claim they are entitled to coverage under the Policies for damages which they purportedly sustained due to the closure of their respective business due to the COVID-19 pandemic.

11. The State Court Action alleges that from March 13, 2020 to November 15, 2020, Governor Jay Inslee of Washington issued proclamations and orders related to the COVID-19 outbreak in King County and Washington State (collectively, the "Proclamations and Shut-Down Orders"). Plaintiffs complied with these Proclamations and Shut-Down Orders. This compliance

1 included preventing the public, including its employees and customers, from  
2 entering its businesses to participate in dining, drinking, and congregating  
3 activities. Plaintiffs claimed they were forced to curtail and/or suspend their  
4 businesses and incur extra expense. They also assert that they were unable to use  
5 their restaurant and bar for their intended purposes. *See* Exhibit 3, Amended  
6 Compl. at ¶¶ 48-52.

7 12. The State Court Action alleges that in March 2020, Plaintiffs  
8 tendered their losses to Defendants. Plaintiffs allege that Defendants denied all  
9 coverage to Cha Cha Lounge by letter dated April 2, 2020 and denied all  
10 coverage to Percy's by letter dated March 20, 2020. Plaintiffs allege that these  
11 denials are improper. *See* Exhibit 3, Amended Compl. at ¶¶ 3.7.

12 13. The State Court Action includes breach of contract and declaratory  
13 relief causes of action against Defendants and prays for: (1) A declaratory  
14 judgment that the Policy or Policies cover Plaintiffs' losses and expenses  
15 resulting from the interruption of Plaintiffs' businesses related to COVID-19  
16 and/or orders issued by Governor Inslee, other Governors, and/or other  
17 authorities; (2) A declaratory judgment that Defendants are responsible for timely  
18 and fully paying all such losses; (3) Damages; (4) Class action status under CR  
19 23; (5) Pre- and post-judgment interest at the highest allowable rate; (6) Attorney  
20 fees and costs under *Olympic Steamship Co. v. Centennial Insurance Co.*, 117  
21 Wn.2d 37, 52, 811 P.2d 673 (1991), and/or applicable law.

22 ///

23 ///

#### IV. BASIS FOR REMOVAL

14. The Court has original jurisdiction over the subject matter of this action under 28 U.S.C. § 1332 because (1) there is complete diversity of citizenship between Plaintiffs and Defendants; (2) the amount in controversy exceeds \$75,000.00 USD; and (3) all other requirements for removal have been satisfied. Furthermore, the Court has jurisdiction under the CAFA, 28 U.S.C. § 1332(d), because this case is (1) a proposed class action within the meaning of CAFA, in which (2) “any member of a class of plaintiffs is a citizen of a State different from any defendant,” (3) the “number of members of all proposed plaintiff classes in the aggregate is [not] less than 100,” and (4) “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” See 28 U.S.C. § 1332(d)(2), (d)(5)(B); *Nguyen v. Travelers Cas. Ins. Co. of Am.*, 2021 U.S. Dist. LEXIS 101772 at \* 10. Furthermore, no CAFA exclusions apply.

##### A. Diversity of Citizenship

15. For a case to qualify for federal jurisdiction under 28 U.S.C. § 1332, there must be complete diversity of citizenship between the parties opposed in interest. *Kuntz v. Lamar Corp.*, 385 F.3d 1177, 1181 (9<sup>th</sup> Cir. 2004). For purposes of diversity jurisdiction, it is black-letter law that a corporation is a citizen of its state of incorporation and the state where its principal place of business is located. 28 U.S.C. § 1332(c)(1); *see also, e.g., Hertz Corp. v. Friend*, 559 U.S. 77, 78 (2010).

///



1           16. Here, the diversity of citizenship requirement of 28 U.S.C. § 1332  
 2 has been satisfied because Plaintiffs are Washington State limited liability  
 3 companies, with their principal place of business in Kings County, Washington,  
 4 and thus, they are Washington citizens. Defendants are all domiciled in the  
 5 United Kingdom and none are citizens of Washington.

6           17. Furthermore, CAFA's minimal diversity standard is satisfied when  
 7 “any member of a class of plaintiffs is a citizen of a State different from any  
 8 defendant.” 28 U.S.C. § 1332(d)(2)(A). Here, Plaintiffs are Washington citizens  
 9 and none of the Defendants are Washington citizens. Alternatively, CAFA's  
 10 minimal diversity standard is satisfied when “any member of a class of plaintiffs  
 11 is a citizen of a State and any defendant is a foreign state or a citizen or subject of  
 12 a foreign state.” 28 U.S.C. § 1332(d)(2)(C). In this case, Plaintiffs, who allege  
 13 to be members of a class, are Washington citizens and at least one defendant is a  
 14 subject of a foreign state, namely the United Kingdom. Thus, this putative class  
 15 action satisfies CAFA’s minimal diversity requirements.

16           **B. Amount in Controversy**

17           18. When the complaint does not specify a particular amount of damages  
 18 as is the case here, “the removing defendant bears the burden of establishing, by a  
 19 preponderance of the evidence, that the amount in controversy” exceeds \$75,000.  
 20 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

21           19. Soon after filing their Answer to the Amended Complaint, on  
 22 September 22, 2021, Defendants, without waiving their objection to improper  
 23 service, propounded targeted requests for admissions on Plaintiffs seeking



1 information regarding the amount of damages sought by Plaintiffs to determine  
 2 whether this case meets the amount in controversy required for federal  
 3 jurisdiction.

4 20. Based on the unverified discovery responses of Plaintiffs, served on  
 5 October 22, 2021, Plaintiffs' claims for damages exceed the \$75,000 amount in  
 6 controversy requirement. While Plaintiffs did not provide a direct admission or  
 7 denial that the damages claimed in the State Court Action exceeds \$75,000 per  
 8 individual, Plaintiffs authenticated their Loss Notices with loss dates of March 16,  
 9 2020. The Amended Complaint implicates several governor's proclamations  
 10 relating to Covid 19 which affected Plaintiffs' claimed use of their business. The  
 11 first Governor's proclamation is dated February 29, 2020 while the last  
 12 proclamation was made on November 15, 2020. Exhibit 3, Amended Compl. ¶¶  
 13 36, 46. Plaintiffs alleged they complied with these orders which among other  
 14 things forced business closure and loss use of property. Exhibit 5, Amended  
 15 Compl. ¶¶ 49 – 53.

16 21. Plaintiff Cha Cha Lounge's claim notice dated March 16, 2020 was  
 17 submitted soon after the first proclamation. The probable amount of loss in the  
 18 notice is \$10,000. Thus, there was a \$10,000 amount of loss for the first month of  
 19 closure for Cha Cha Lounge. Based on the allegations of the Amended  
 20 Complaint, there were approximately 11 months of closure. The allegations  
 21 considered in conjunction with the \$10,000 amount loss for one month identified  
 22 in Cha Cha Lounge's notice of claim leads to a claimed total of at least \$110,000  
 23 in amount of controversy for Cha Cha Lounge.

22. Likewise, Percy's claim notice also states \$10,000 in approximate loss for date of loss March 16, 2020. The probable amount of loss in the notice is \$10,000. Thus, there was a \$10,000 amount of claimed loss for the first month of closure for Percy's. Based on the allegations of the Amended Complaint, there were approximately 11 months of closure. The allegations considered in conjunction with the \$10,000 amount loss for one month identified in Percy's notice of claim – which was only recently authenticated - leads to a total of \$110,000 in amount of controversy for Percy's.

23. In light of Plaintiffs' recently served discovery responses, the amount in controversy for the State Court Action, if proved, amounts to \$110,000 per Plaintiff, which would exceed \$75,000 and meets the jurisdictional amount for removal to federal court. Defendants could only recently ascertain this amount in controversy through Plaintiffs' discovery responses served on October 22, 2021. Furthermore, on November 22, 2021, Plaintiffs' counsel confirmed that Plaintiffs' unverified responses were truthful and accurate and that Plaintiffs no longer disputed that the amounts in controversy were stratified with respect to seeking removal.

24. As noted above and alleged by Plaintiffs, this purported class action, brought on behalf of “hundreds,” (Amended Compl. at ¶ 80) is not one in which the “number of members of all proposed classes in the aggregate is less than 100.” 28 U.S.C. § 1332(d)(5)(B). *See Kuxhausen v. BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1140 (9th Cir. 2013) (alleging “a class of ‘thousands of persons’” implies “a logical minimum of 2,000 class members”) (quoting *Tompkins v. Basic*

1 *Research LLC*, No. S–08–244 LKK/DAD, 2008 WL 1808316, at \*3 (E.D. Cal.  
2 Apr. 22, 2008)).

3 25. Under CAFA, the claims of individual class members are aggregated  
4 to determine if the amount in controversy exceeds the required “sum or value of  
5 \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §§ 1332(d)(2), (d)(6). The  
6 U.S. Supreme Court has clarified that a notice of removal need only include a  
7 plausible allegation that the amount in controversy exceeds \$5 million and need  
8 not include evidentiary submissions. *Dart Cherokee Basin Operating Co. v.*  
9 *Owns*, 574 U.S. 81, 135 S.Ct. at 550–51 (2014). While Defendants deny that a  
10 class is a proper vehicle for Plaintiffs' claims, or that Defendants are liable for any  
11 such claims, but has calculated the amount in controversy for purposes of this  
12 notice by taking Plaintiffs' allegations at face value. See also *Nguyen v. Travelers*  
13 *Cas. Ins. Co. of Am.*, No. 2:20-cv-00597-BJR, \_\_ F.Supp.3d \_\_, 2021 WL  
14 2184878, 2021 U.S. Dist. LEXIS 101772 (W.D. Wash. May 28, 2021),  
15 *reconsideration denied*, 2021 WL 3077922, 2021 U.S. Dist. LEXIS 136141  
16 (W.D. Wash. July 21, 2021). Without conceding any merit to Plaintiffs’  
17 allegations, causes of action, or damages claims, assuming \$110,000 per class  
18 member in that allege damages is typical of hundreds of class members as  
19 Plaintiffs allege here, the amount in controversy (100x \$110,000 = \$11,000,000)  
20 alleged here satisfies CAFA's jurisdictional threshold of \$5 million. See *Lewis v.*  
21 *Verizon Communs., Inc.*, 627 F.3d 395, 397 (9th Cir. 2010) (noting removing  
22 defendant need only show “that the potential damages could exceed the  
23 jurisdictional amount”); *Woods v. CVS Pharm., Inc.*, No. CV 14-0259, 2014 U.S.

1 Dist. LEXIS 13339, at \*5 (C.D. Cal. Jan. 30, 2014) (“The ultimate inquiry is what  
 2 amount is put 'in controversy' by the plaintiff's complaint, not what a defendant  
 3 will actually owe.”). Other categories of damages, including but not limited to  
 4 recovery of attorney fees, only increases the amount in controversy. See also,  
 5 *Nguyen*, 2021 U.S. Dist. LEXIS 101772 at \*10.

### 6 **C. Other Removal Requirements**

7 26. Defendants contend that the Complaint and Amended Complaint  
 8 were not properly served, and thus, neither triggers the time to file a notice of  
 9 removal under U.S.C. § 1446(b)(1). This removal is timely as the timeframe to  
 10 file the notice has neither been triggered nor has expired.

11 27. Furthermore, Defendants, while disputing proper service, were  
 12 served with Plaintiffs' responses to Defendants' first set of Requests for  
 13 Admissions on October 22, 2021 and later confirmed on November 22, 2021 by  
 14 Plaintiffs' counsel that Plaintiffs would not contest the amount in controversy  
 15 being now met as the responses, while not verified, were accurate. As such, this  
 16 Notice of Removal, filed on November 22, 2021, is within thirty (30) after receipt  
 17 by the Defendants, through service, of "other paper" from which it may first be  
 18 properly ascertained that the case is one which is or has become removable.  
 19 Therefore, this removal is timely pursuant to 28 U.S.C. § 1446(b)(3) & LCR  
 20 101(a) as based on the information recently provided to Defendants so as to now  
 21 believe in good faith that Plaintiffs are seeking damages in excess of the  
 22 jurisdictional amount notwithstanding the fact that the prayer in Plaintiffs'  
 23 pleadings did not specify the dollar damage being sought in an attempt to avoid

removal based on diversity and the holding in *Nguyen v. Travelers Cas. Ins. Co. of Am.*, No. 2:20-cv-00597-BJR, \_\_ F.Supp.3d \_\_, 2021 WL 2184878, 2021 U.S. Dist. LEXIS 101772 (W.D. Wash. May 28, 2021), *reconsideration denied*, 2021 WL 3077922, 2021 U.S. Dist. LEXIS 136141 (W.D. Wash. July 21, 2021). Defendants are concurrently filing a copy of this Notice of Removal with the Clerk of the King County Superior Court and the attorney representing Plaintiff, pursuant to 28 U.S.C. § 1446(d). A certificate of service is supplied with this petition for notice of removal listing Plaintiffs' counsel's contact information and publically available email address pursuant to 28 U.S.C. § 1446(b) and LCR 101(b).

28. Pursuant to LCR 101(c), Defendants will file all additional records and proceedings in the State Court Action, together with defense counsel's verification, within fourteen days of the filing of this Notice of Removal.

29. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required by 28 U.S.C. § 1446(a).

## V. VENUE

30. Defendants file this Notice of Removal in the United States District Court for the Western District of Washington, at Seattle, which is the federal district in which Plaintiffs brought the State Court Action. Accordingly, venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and 28 U.S.C. § 128(b).

## VI. NO WAIVER AND RESERVATIONS

31. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Defendants' right to assert any defense. Defendants do not

1 waive and expressly reserve any and all rights, defenses, or objections of any  
 2 nature that they may have to Plaintiff's claims. Defendants further do not waive  
 3 the right to assert any and all defenses or affirmative defenses to Plaintiffs'  
 4 Amended Complaint, including but not limited to, jurisdiction, sufficiency of  
 5 process, or service of process. Defendants reserve the right to assert all applicable  
 6 claims and defenses in response to the Amended Complaint.

7 **WHEREFORE**, Defendants hereby remove this case from the Superior  
 8 Court of the State of Washington, County of King, and request that this Court  
 9 accept jurisdiction of this action, and that this case be placed upon the docket of  
 10 this Court for further proceedings, same as though this case had originally be  
 11 instituted in this Court.

12 Respectfully submitted,

13 DATED this 22nd day of November, 2021.

14 

15 \_\_\_\_\_  
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 Attorneys for Specially Appearing Defendants  
 Certain Underwriters at Lloyd's, London severally  
 subscribing to policy number RTB-0000493-01 and  
 policy number RTB-0000494-01.

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this day he/she caused to be served in the manner noted below, a copy of the document to which this certificate is attached, on the following counsel of record:

Amy Williams-Derry, Esq.  
 Ian S. Birk, Esq.  
 Gabriel E. Verdugo, Esq.  
 Nathan L. Nanfelt, Esq.  
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☒ Via Email Transmission  
☐ Via Facsimile  
☐ Via Hand Delivery  
☒ Via U.S. MAIL - I enclosed [X] a true copy [] the original(s) documents in a sealed envelope or package addressed to the persons at the addresses as listed above.  
 [X] Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct this 22<sup>th</sup> day of November, 2021.

/s/ Brian Felder  
 Brian Felder